

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 97-0172 MVE
MOTOR VEHICLE EXCISE TAX
For The Tax Period: 1995**

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ISSUES

I. Motor Vehicle Excise Tax – Imposition

Authority: IC 9-18-2-1, IC 9-13-2-78.

The Taxpayer protests the imposition of the motor vehicle excise tax on his 1994 Honda.

STATEMENT OF FACTS

The Taxpayer was assessed the Motor Vehicle Excise Tax on his 1994 Honda. The Taxpayer was a graduate student during the assessment period and paid out-of-state tuition. Also, the Taxpayer filed an IT-40 PNR. Less than one-half (1/2) of the Taxpayer's income was earned in Indiana. The Taxpayer currently lives in Arkansas. More facts will be supplied as necessary.

I. Motor Vehicle Excise Tax: Imposition

DISCUSSION

IC 9-13-2-78 defines "Indiana resident" as a person who is one of the following:

- (1) A person who has been living in Indiana for a least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:

- (A) Attending an institution of higher education
- (B) Serving on active duty in the armed forces of the United States.
- (2) A person who is living in Indiana if the person has no other legal residence.
- (3) A person who is registered to vote in Indiana.
- (4) A person who has a child enrolled in an elementary or secondary school located in Indiana.
- (5) A person who has more than one-half (1/2) of the person's gross income derived from sources in Indiana... However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4).

Also, pursuant to Indiana Code Section 9-18-2-1, within sixty days of becoming an Indiana resident, a person must register all motor vehicles owned by that person that will be operated in Indiana.

The Taxpayer must prove by a preponderance of the evidence that he was not a resident under subsections (1) through (4) of IC 9-13-2-78. The Taxpayer derived less than one-half (1/2) of his income from sources in Indiana during 1995. Also, the Taxpayer provided evidence that he was living in Indiana for the purpose of attending an institution of higher education and paying out-of-state tuition. The Taxpayer had no children at the time of the assessment and was not registered to vote in Indiana during the assessment period. Therefore, the Taxpayer proves by a preponderance of the evidence that he was not an Indiana resident during the assessment period.

FINDING

The Taxpayer's protest is sustained.